

Germany

Citation for published version (APA):

Klip, A. (1995). Germany: Draft action on the co-operation with the International Tribunal for War Crimes in Former Yugoslavia (ITWCFY). *International Enforcement Law Reporter*, 11(2), 70-71. [XI.A].
<https://heinonline.org/HOL/P?h=hein.journals/ielr11&i=43>

Document status and date:

Published: 01/02/1995

Document Version:

Publisher's PDF, also known as Version of record

Please check the document version of this publication:

- A submitted manuscript is the version of the article upon submission and before peer-review. There can be important differences between the submitted version and the official published version of record. People interested in the research are advised to contact the author for the final version of the publication, or visit the DOI to the publisher's website.
- The final author version and the galley proof are versions of the publication after peer review.
- The final published version features the final layout of the paper including the volume, issue and page numbers.

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for implementation and enforcement, and include sustainability criteria and objectives in national and other development strategies; undertake national consultations to identify priorities for possible international collaboration; establish mechanisms for cooperation among government agencies, including in the legal and enforcement areas, to facilitate environmental information exchange, technology cooperation and capacity-building; and develop compatible environmental laws and regulations, at high levels of environmental protection, and promote the implementation of international environmental agreements.

5. *Implementation*

The Plan of Action in the Appendix provides the primary responsibility to implement the Plan will rest with the governments individually and collectively, with the participation of all elements of the civil societies. In addition to the specific recommendations and agreements in the individual criminal areas, specific recommendations are made for hemispheric organizations.

The OAS will have a support role in connection with: promoting and protecting human rights; combating corruption; and eliminating the threat of national and international terrorism. Already CICAD has a prominent role in combating drug trafficking.

The IDB has a particularly important role in; providing for a partnership for pollution prevention; promoting and protecting human rights; combating corruption; and combating drug trafficking.

6. *Analysis*

The Summit of the Americas has put on a hemispheric level several important areas of criminal cooperation. Obviously, the Plan of Action is "soft" law and does not bind the governments. The absence of real obligations represents in part lack of agreement on the goals and trade-offs that are required to enforce the law and reflects the immature status of hemispheric mechanisms and institutions on enforcement. Nevertheless, another step has been taken. Some vision and political will are among the elements that will propel further the broad goals into concrete action.

XI. WAR CRIMES

A. **Germany: Draft Action on the Co-operation with the international Tribunal for War Crimes in Former Yugoslavia (ITWCFY)**

by André Klip

Germany expressed its willingness to cooperate with the International Tribunal by preparing legislation which was submitted to Parliament 4 November 1994 (Entwurf eines Gesetzes über die Zusammenarbeit mit dem Internationalen Strafgerichtshof für das ehemalige Jugoslawien, Bundesrat Drucksachen 991/94).

In Section 1 Germany accepts Security Council's Resolutions 808 (1993) and 827 (1993) as a legal basis to assist the ITWCFY and declares its willingness to do so. The most important provision is found in Section 2, which states that on the request of the ITWCFY criminal proceedings will be "deferred" (in German: "Strafverfahren werden übergeleitet") from a German court to the ITWCFY. This deferral of proceedings is possible at any stage of the criminal proceedings. The German government states in their Explanatory Memorandum that the use of the word "defer" (Überleitung) expresses that the German proceedings and the proceedings before the ITWCFY should be seen as one. Section 2 solves the problems like in the *Tadic* case, in which Germany had already started the proceedings when the ITWCFY requested his extradition. With this new act it is now possible to discontinue



proceedings against an accused in Germany without a final decision of a German court. It enables Germany to act in accordance with Article 9 of the Statute of the ITWCFY in which states that the tribunal "shall have primacy over national courts."

Section 3 states that several provisions on extradition of the Law on International Assistance in Criminal Matters are applicable. Sections 4 and 7 introduce a new provision in this Law enabling German authorities to give mutual legal assistance to international tribunals. The new Section 67a of the Law on Assistance in Criminal Matters is therefore relevant for other international tribunals as well.²¹

Section 4 paragraph 2 makes the summons of a witness in Germany to appear before the ITWCFY in the Hague compulsory under German law. Paragraph 3 of Section 4 allows the ITWCFY, the accused and interested persons to be present at interrogations in Germany which take place at the request of the tribunal. Paragraph 4 of Section 4 is without any precedence among civil law countries. Officials of the tribunal may take statements of witnesses and suspects and collect other evidence in Germany independently. However, compulsion can only be used in such cases in accordance with German law and by German authorities. Section 5 is about commutation of sentences and pardon. Indirectly Germany indicates its willingness to enforce sentences and to accept convicted persons.

The establishment of a Rwanda tribunal draws attention to a problem for those countries which at present are unable to assist international tribunals. By passing legislation limited to the assistance to the Yugoslavia tribunal, they prevent themselves from using this legislation as a legal basis for assistance to the Rwanda tribunal and any other present or future international tribunal. The new section 67a of the German Law on International Assistance in Criminal Matters partly solves this problem by introducing a general provision on the assistance to international tribunals. However, other aspects of mutual legal assistance (extradition, transfer of proceedings, commutation and execution of sentences) and the special position of international courts require detailed legislation like the German Act on the Cooperation with the ITWCFY.

XI. BIBLIOGRAPHY OF BOOKS, ARTICLES AND DOCUMENTS

By Bruce Zagaris

A. Books

1. Banking and Money Laundering

R.T. Naylor, *HOT MONEY AND THE POLITICS OF DEBT*. (Black Rose Bks. 1994, 532 pp.).

Ann Woolner, *WASHED IN GOLD THE STORY BEHIND THE BIGGEST MONEY-LAUNDERING INVESTIGATION IN U.S. HISTORY* (Simon & Schuster/American Lawyer Books, 391 pp. \$25.00).
(The author, an associate editor at the *Fulton County Daily Report* in Atlanta discusses the recruitment of a convicted cocaine trafficker to penetrate the Medellin drug cartel and Operation "La Mina," a laundering operation that moved \$1.2 billion and resulted in the arrest and conviction of many high-level launderers. The book raises questioned about U.S. anti-drug policy.)

²¹ E.g., the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States.